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ROUTING SLIP
CONTRACTS AND AGREEMENTS

Originating Department: Community Development

Council Meeting Date: 12/6/2012

Department Contact: Ken Benion

Phone # 5427

Contract or Agreement: Agreement

Document Name: Modification and Restatement of Promissory Note UDAG Loan - City of Huntsville an...

City Obligation Amount: 0.00

Total Project Budget: 0.00

Uncommitted Account Balance: 0.00




Account Number: NA

Procurement Agreements

<u>Not Applicable</u>	<u>Not Applicable</u>
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Grant-Funded Agreements

<u>Not Applicable</u>	Grant Name:
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Department	Signature	Date
1) Originating		12/3/12
2) Legal		12-5-12
3) Finance		12/5
4) Originating		
5) Copy Distribution		
a. Mayor's office (2 copies)		
b. Clerk-Treasurer (Original & 2 copies)		
c. Legal (1 copy)		

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 12/6/2012

Action Requested By:
Community
Development

Agenda Item Type
Resolution

Subject Matter:

Resolution to modify and restate promissory note UDAG Program Loan between The City of Huntsville and Spring Branch Ltd..

Exact Wording for the Agenda:

Resolution authorizing the Mayor to modify and restate the terms and conditions of the promissory note on UDAG Program Loan between The City of Huntsville and Spring Branch Ltd. for Burgundy Square Apartments.

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

This modification will further amend the terms and conditions of the above described loan with the City in order to facilitate additional financing to extinguish the debt owed to Bancorp South as well as address necessary improvements and repairs of the building(s) located upon the property in order to continue to provide residential dwelling units for individuals and families whose income does not exceed eighty percent (80%) of the Huntsville area median income.

Associated Cost:

Budgeted Item: Not applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: 

Date: 12/3/2012

RESOLUTION NO. 12-_____

WHEREAS the City Council of the City of Huntsville, Alabama, does hereby declare in accordance with Code of Alabama (1975) that the Mayor be, and is hereby authorized to enter into a Modification and Restatement of promissory note UDAG Program Loan between the City of Huntsville and Spring Branch Ltd., on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Modification and Restatement of promissory note on UDAG Program Loan by and between the City of Huntsville and Spring Branch Ltd.," consisting of five (5) pages, including attachments, and the date of December 6, 2012 appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 6th day of December, 2012.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 6th day of December, 2012.

Mayor of the City of
Huntsville, Alabama

MODIFICATION AND RESTATEMENT OF
PROMISSORY NOTE
UDAG PROGRAM LOAN

Recitals:

WHEREAS, on or about the 2nd day of October, 1991, Huntsville Housing Developments, Inc., did execute and deliver to the City of Huntsville, Alabama, a municipal corporation within the State of Alabama (hereinafter "City") a Promissory Note whereby it agreed to pay Payee (as defined therein) the sum of ONE MILLION NINETEEN THOUSAND FIVE HUNDRED AND NO/100 (\$1,019,500.00) DOLLARS; and

WHEREAS, said Promissory Note was amended on January 9, 1992 and again on the 25th day of August, 1993, and again on June 1, 1999; and

WHEREAS, Huntsville Housing Developments, Inc. did also on the 25th day of August, 1993, transfer and convey to NBA, LTD., an Alabama limited partnership ("NBA"), certain property, as same is more particularly described on Exhibit "A" attached hereto and made a part hereof as if set forth in full herein (the "Property") which Property secured said Promissory Note; and

WHEREAS, said Property was originally pledged by Huntsville Housing Developments, Inc. as security for the above described Promissory Note by execution and delivery of a Mortgage recorded on October 23, 1991, in Mortgage Book 1756, at Pages 624-626, which said Mortgage was thereafter amended by an Amended Mortgage recorded on August 25, 1993, in Mortgage Book 1944, at Pages 316-320, both in the Office of the Judge of Probate of Madison County, Alabama; and

WHEREAS, NBA did thereafter enter into an Agreement to Restructure Loan with the City dated June 1, 1999, setting forth new terms and conditions related to the loan, and did further execute and deliver a Second Amended Mortgage recorded on June 3, 1999, in Mortgage Book 2548, at Pages 452-455, in the Office of the Judge of Probate of Madison County, Alabama; and

WHEREAS, NBA did thereafter enter into an Agreement to Restructure Loan and Modify Promissory Note with the City dated November 17, 2011, setting forth new terms and conditions related to the loan, and did further execute and deliver a Third Modification to Mortgage recorded on December 21, 2011, in Document Number 20111221000697970, in the Office of the Judge of Probate of Madison County, Alabama (said Third Modification to Mortgage, along with the Mortgage Amended Mortgage and Second Amended Mortgage heretofore referenced may sometimes hereafter collectively be referred to as the "Mortgage"); and

WHEREAS, said Mortgage, and all amendments thereto, are presently secondary, subordinate and inferior to a mortgage in favor of BANCORPSOUTH BANK ("Bancorpsouth"); and

WHEREAS, NBA has agreed to sell and convey the Property to SPRING BRANCH, LTD., an Alabama limited partnership ("Spring Branch"); and

WHEREAS, Spring Branch has agree to assume the loan heretofore referenced secured by the Mortgage, upon the modification of certain terms and conditions thereof for the purposes set forth hereafter; and

WHEREAS, in order to facilitate additional financing to extinguish the debt due and owing to Bancorpsouth, as well as address further necessary improvements and repairs of the building(s) located upon the Property in order to continue to provide residential dwelling units for individuals and families whose income does not exceed eighty percent (80%) of the Huntsville area median income, Spring Branch has requested that the City presently suspend payments pending the completion of such necessary improvements and repairs; and

WHEREAS, new lender of the aforementioned additional financing requires that Spring Branch achieve a Debt Service Coverage Ratio ("DSCR") of 1.2 with an assumption of a fully amortizing loan with an interest rate of 5.75% and a thirty (30) year amortization schedule; and

WHEREAS, Spring Branch further requests that the loan be modified such that the maturity date be extended for thirty (30) years with an interest rate of three (3.0%) percent compounded annually; and

WHEREAS, new lender further requires a first position lien upon the Property in order to lend the sums necessary to pay in full the current loan as well as fund the necessary improvements; and

WHEREAS, it is to the benefit of the City to provide such low income housing and to protect its collateral interest in the Property and the City has therefore agreed to the terms and conditions as set forth above and hereafter, including the subordination of its Mortgage to the mortgage of the new lender up to the amount of the loan.

NOW, THEREFORE, the premises considered, and for good and valuable considerations to both the City and Spring Branch, such considerations being hereby acknowledged, the City and Spring Branch do hereby amend, modify, renew and restate the terms of the promissory note as follows:

PROMISSORY NOTE

FOR VALUE RECEIVED, Spring Branch (hereinafter "Promissor") promises to pay to the order of the City, acting by and through its Department of Community Development, its successors and assigns (hereinafter "Holder"), the sum of Eight Hundred Seven Thousand Three Hundred Ninety-two and 00/100 Dollars (\$ 807,392.00) (the "Loan"), payable to the Holder at 120 Holmes Avenue, Huntsville, Alabama, or at such other place as Holder may from time to time designate, in the manner hereinafter set forth.

From and after December ____, 2012, the effective date hereof, interest on the Loan shall accrue at the rate of three percent (3.0%) per annum and shall compound annually, on the unpaid balance.

Upon the latter of completion of the improvements, or May 15, 2014, Promissor shall pay to Holder Four Hundred Thousand and no/100 (\$400,000.00) Dollars.

Commencing on May 15, 2014, and continuing on the 15th day of the second month of each new quarter thereafter (such dates being February 15th, May 15th, August 15th, and November 15th each year), Promissor shall pay to Holder such sum as shall be available to Promissor after payment to the first position mortgage lender of a loan in the original principal amount of (and never to exceed) One Million Seven Hundred Thirty-five Thousand and No/100 (\$1,735,000.00) Dollars with an assumed full amortization upon a note with an interest rate of 5.75% per annum and a Debt Service Coverage Ratio (DSCR) of not less than 1.2, but such quarterly payment on the Loan shall never exceed Fifteen Thousand and No/100 (\$15,000.00) Dollars per quarter. For calculation purposes of the amount of the quarterly payment to be paid on the Loan (if any), the DSCR for the preceding quarter of the year (Jan.-Mar., Apr.-June, July-Sept., and Oct.-Dec.) will be reviewed and after applying the heretofore set formula, those

sums which are available without exceeding the DSCR of 1.2 will be paid to Holder on the 15th day of the 2nd month following the previous quarter, up to a maximum payment of \$15,000.00.

In order to provide the Holder the ability to confirm and verify the DSCR and payments that are due to Holder, Promissory hereby agrees to provide Holder initial financial statements and a DSCR report upon execution of this Promissory Note and does further agree to provide quarterly DSCR reports and quarterly financial statements in accordance with the payments schedules set forth in the preceding paragraph and shall provide said DSCR report and financial statements at the time of such quarterly payments.

The indebtedness shall be amortized over a term of thirty (30) years with interest at three percent (3.0%) compounded annually. If not sooner paid, any and all remaining indebtedness shall be due and payable in full on the first (15th) day of May, 2044 (the "Maturity Date").

NONRECOURSE TO MAKER

(a) Anything contained herein or in the Mortgage to the contrary notwithstanding, neither Promissor nor any general or limited partner of Promissor shall have any personal liability for any breach, default or event of default hereunder or under the Mortgage, and, upon the occurrence of an event of default hereunder or under the Mortgage, Holder's recourse shall be limited to the collateral securing the loan, and no deficiency shall be sought against Promissor or any general or limited partner of Promissor with respect thereto.

(b) Notwithstanding anything herein to the contrary, Promissor hereby makes subject and subordinate the payment of the principal under this promissory note and the Mortgage, together with any and all interest accrued or to accrue thereon and fees and expenses and other amounts incurred by Holder, to the loans (the "Senior Loans") made by any and all current and future mortgage lenders ("Senior Mortgage Lenders"), including PNC Bank, National Association ("PNC"), its successors and assigns, to Promissor, the documents evidencing, supporting or securing the Senior Loans (the "Senior Loan Documents"), the liens and all rights of Senior Mortgage Lenders under the Senior Loan Documents and the payment of principal, interest, fees, costs and expenses and other amounts due and owing under the Senior Loan Documents (including interest accruing after the date on which Promissor becomes subject to the jurisdiction of any federal or state debtor relief statute, whether or not recoverable against Promissor) by Promissor, and Holder agrees, after it has received notice from a Senior Mortgage Lender that a default has occurred and is continuing under the terms of the Senior Loan Documents not to ask, demand, sue for, exercise or take other enforcement actions with respect to any right of setoff or take or receive payment of, or discharge Promissor from all or any part of, the amounts due under this promissory note or the Mortgage unless and until the Senior Loans, and all other amounts due Senior Mortgage Lenders under terms of the Senior Loan Documents, shall have been fully and undefeasibly paid in cash and discharged as provided in that certain Intercreditor and Subordination Agreement among Promissor, PNC and the City.

Promissor reserves the right to prepay this debt at any time, in whole or in part without payment of penalty, premium or fee. All payments made by Promissor shall be applied first to the interest due and then to the principal.

In the event the undersigned shall fail to pay any sum herein required to be paid when due and if

such failure be subsisting on the date the next installment payment under this Note becomes due and payable, the unpaid principal amount of this note, together with accrued interest, shall become immediately due and payable, at the option of the Holder, without notice to the undersigned. Failure of the Holder to exercise such option shall not constitute a waiver of such default.

If any scheduled payment is in default more than ten (10) days, the undersigned shall pay to the Holder a late charge not to exceed five percent (5.0%) per annum of the amount of such scheduled monthly payment in default. If said Note be reduced to judgment, such judgment shall bear the statutory interest rate on judgments.

This Note is secured by the Mortgage as heretofore referenced.

Demand, protest and note of demand and protest are hereby waived, and the undersigned hereby waives, to the extent authorized by law, any and all homestead and other exemption rights which otherwise would apply to the debt evidenced by this Note.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed by its duly authorized representative, as of the _____ day of December, 2012.

SPRING BRANCH, LTD.,
an Alabama limited partnership

By: Spring Branch, LLC
Its: General Partner

By: Neighborhood Concepts, Inc.
Its: Managing Member

By: _____
Mary Ellen Judah
Its: Executive Director

The foregoing terms, conditions, modifications, and amendments, including the recitals which are set forth in this Modification and Restatement of Promissory Note, are hereby ratified, affirmed, approved and accepted as of the _____ day of December, 2012.

CITY OF HUNTSVILLE, ALABAMA, a
municipal corporation within the State of
Alabama

ATTEST: _____
Charles E. Hagood
as Clerk-Treasurer of City Huntsville,
a municipal corporation within the
State of Alabama

By: _____
Tommy Battle
Its: Mayor

EXHIBIT A

LEGAL DESCRIPTION

Lot 4, Block 1, according to the map of survey of the resurvey of Lot 4, Block 1, Binford Court Subdivision, Huntsville, Alabama, as recorded in Plat Book 26, at Page 20, Probate Records of Madison County, Alabama (the "Property").